

In the Matter of License No. R-9861 and  
all other Seaman Documents  
Issued to: HAROLD B. JOHNSTON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1237

HAROLD B. JOHNSTON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 6 June 1960, an Examiner of the United States Coast Guard at San Francisco, California, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as a radio operator on board the United States SS PRESIDENT GARFIELD under authority of the license above described, on 2 April 1960, Appellant assaulted and battered the Second Mate by kicking him.

At the hearing, Appellant was represented by an attorney. Appellant entered a plea of not guilty to the charge and specification. The only evidence introduced was the testimony of the Second Mate and Appellant.

Appellant has no prior record.

OPINION

The evidence shows that Appellant and the Second Mate were hurrying along a narrow passageway in opposite directions and, after they squeezed past each other, Appellant kicked the Second Mate in the seat of the pants. Appellant testified that he hurt his arm in passing the Second Mate; the kicking was due to a reflex action, self-defense motivation, and anger.

Concerning the points raised on appeal, there is no evidence in the hearing record that this incident was not recorded in the ship's Official Logbook or that Appellant reported it to the Master at any time. (The Second Mate testified that he reported it to the Master.) There is no evidence of the Master or the Coast Guard treating Appellant unfairly concerning this incident or that the Second Mate was improperly influenced to testify.

Appellant contends that he was aggressively assaulted in the passageway but I agree with the Examiner that Appellant admitted, by his testimony, committing an assault and battery of a minor nature. There was no element of self-defense since the Second was kicked in the rear, and while he was moving away from Appellant. Hence, it is obvious that Appellant's conduct was caused by anger

rather than a reflex action which Appellant could not control.

Since there is no evidence to support the claim that Appellant did not receive a "square deal," the order will be upheld.

ORDER

The order of the Examiner dated at San Francisco, California, on 6 June 1960, is ~~is~~ **AFFIRMED**.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 23rd day of May, 1961.